

1 Now, before we broke for lunch, one of the things that we
2 talked about was the KALW Program Guide. And we looked at
3 the Program Guide for the period April, May and June of
4 1997. And I believe I asked you a question whether there
5 was a similar Program Guide for each quarter of the license
6 renewal period that was covered by the July 1997
7 certification made with the application filed August 1,
8 1997. And if I remember correctly, your testimony was to
9 the effect that there were a number of quarters where no
10 such guide had appeared in the file when you looked at it?

11 A I did say that, yes. I don't recall if those
12 guides reflected the period we're discussing, 1991 through
13 1997 or 1997 through that date in 2001.

14 Q Okay, fair enough. Thinking about it again
15 though, when you looked at the file in April, March or April
16 of -- excuse me -- when you looked at the file in February,
17 March or April of 2001, did you find Quarterly Program Guide
18 for the license renewal period that would have run from 1991
19 to 1997?

20 A I can -- given my memory, I cannot honestly state
21 absolutely what I remember seeing every single quarter for
22 what would be 1991 to 2001, which would have been quite a
23 few program guides.

24 Q Right. Except that this letter, if you recall
25 this letter is focusing on the certification that was made

1 August 1, 1997?

2 A Right.

3 Q And so, you know, at that point the Commission is
4 saying, or asking, when that certification was made, what
5 was in the Public File. One of the questions here or one of
6 the statements being made here is that on August 1, 1997, t
7 the least there were program guides in the station's Public
8 File for all of the quarters?

9 A The only one who, as far as I know, could certify
10 to that would be Jeff Ramirez, who actually did certify that
11 in August of 1997.

12 Q The problem that we have here though is that we're
13 now in April of 2001 and the Commission is saying, you know,
14 we've got some reason to be concerned about that
15 certification, and so what we want is can you tell us what
16 was in the file on August 1, 1997. And one of the
17 statements that's made, that we just went over, was that at
18 the least or at a minimum a copy of the Program Guide for
19 all of the quarters that would have been the subject of that
20 certification that Mr. Ramirez made were in fact in the
21 Public File. And I just want to clarify what your current
22 recollection is, when you looked at the Public File, were
23 those Quarterly Program Guides there for the period covered
24 by the certification?

25 A In 2001, when I looked at the Public File,

ATTACHMENT 5

1 Q And what did you find out?

2 A I was told by Bill, oh, by the way, there's a
3 license challenge against the station from 1997.

4 Q And in response to that, you said?

5 A Oh my God. You guys are kidding.

6 MS. REPP: Just a sort of spontaneous response.

7 BY MR. SHOOK:

8 Q Ms. Sawaya, I am showing you a letter from the
9 Federal Communications Commission that's addressed to Ernest
10 Sanchez?

11 A Yes.

12 Q And it concerns KALW Radio. And my question to
13 you is, have you seen this letter before today?

14 A I might have, I cannot say for sure. My guess is,
15 and this is only a guess, that I have not or that I did not,
16 but quite frankly, sir, I really don't remember.

17 Q You're making me feel old.

18 A I'm just trying to be respectful.

19 Q All right. If could please just read to yourself
20 what follows from the word 'Accordingly', and there are
21 numbers one through five that extend from page two to page
22 three, if you could just read that information to yourself?
23 The FCC has an amazing habit of sometimes calling questions
24 directives, I guess that's a little bit scarier than just a
25 plain old question. Now, with respect to Directive No. 1,

1 were you aware that in March of 21001 that the FCC was
2 inquiring or had wanted the information in response to a
3 question or a directive like that?

4 A No. I really didn't start putting the pieces
5 together probably until about mid March.

6 Q Until mid March.

7 A When I started to read through the files.

8 Q Now, were you asked by anyone to respond to
9 Directive No. 1?

10 A No.

11 Q Do you know whether anyone at the radio station
12 was asked to respond to Directive No. 1?

13 A I don't know.

14 Q Moving on to -- well, -- okay. Moving on to
15 Director No. 2, were you asked to respond to Directive No.
16 2?

17 A No.

18 Q Do you know of anyone at the radio station who was
19 asked to respond to Directive No. 2?

20 A No.

21 Q Moving to Directive No. 3, were you asked to
22 respond to Directive No. 3 by anyone?

23 A No.

24 Q Do you know whether anyone at the radio station
25 was asked to respond to Directive No. 3?

1 A I don't know.

2 Q Directive No. 4, were you asked to respond by
3 anyone to Directive No. 4?

4 A No.

5 Q Do you know whether anyone at the radio station
6 was asked to respond to Directive No. 4?

7 A I don't know.

8 Q Directive No. 5, were you asked to respond by
9 anyone to Directive No. 5?

10 A No.

11 Q Including part A, or subpart (a), whatever you
12 want to call that?

13 A No, not at the time of my arrival I was not.

14 Q And do you know whether anyone at the radio
15 station was asked to respond to Directive No. 5, including
16 subpart (a)?

17 A I don't know.

18 Q Now, in front of you there happens to be a copy of
19 a letter dated April 5 and it was filed at the Federal
20 Communications Commission on April 6, 2001. And prior to
21 the time this letter was filed with the FCC, did you see
22 this letter?

23 A I saw it in draft form.

24 Q You saw it in draft form. Were you asked to
25 provide any information or comments relative to the letter?

1 general.

2 A That's a very complicated question, sir. I'm not
3 quite sure what I know now even. You mean about that time,
4 knowing what I know now about that time, or knowing what I
5 know now about Public Information File?

6 Q Let me try to break it out in little -- in more
7 manageable pieces. First of all, the directive is focusing
8 on what was going on in August 1, 1997 when the license
9 renewal application was filed. So, obviously it deals with
10 a period of time that you had absolutely no involvement in
11 what was going on at the radio station. But, knowing what
12 you know now, do you know whether the 'yes' response to the
13 directive on August 1, 1997, when the subject license
14 renewal application was filed, did the KALW Public
15 Information Files contain all of the Ownership Report and
16 Supplemental Reports required to be kept by then Section
17 73.3527?

18 A I'm not sure what I know now makes any difference,
19 only in that what I do know is I think everybody had correct
20 intent. When I looked at it, when I really drilled down
21 some months later and kept going back to the Public File,
22 because this was such a big deal, I saw there were Ownership
23 Reports in there for those years, it seemed fine. It was
24 like oh, okay, I didn't micro them, I didn't look at
25 everything, I just gave it a cursory look, oh, well, this

1 seems okay and this seems okay.

2 Q Let me tell you what is bothering the Commission,
3 I'll try to put it as well as I can. On August 1, 1997
4 there was a renewal application that was filed at the FCC
5 and one of the boxes was checked yes, to the effect that all
6 of the documents that the then rules required were actually
7 in the station's Public File. And following that, there was
8 the Petition to Deny, which came from Golden Gate Public
9 Radio and they made all sorts of charges. But, one of them
10 was to the effect that there were gaps in the understanding
11 Public File, that there were supposed to have been certain
12 documents in the file which at the time weren't there. And
13 so the certification wasn't appropriate, it should have been
14 checked 'no' instead of 'yes'. Now, fast forwarding to
15 February of 2001, the Commission is finally getting around
16 to focusing on this and it's asking KALW SFUSD to go back in
17 time and look at what was happening on August 1, 1997 and
18 just tell us yes or no, were all of the documents that were
19 supposed to be in the file there. And you can see from the
20 response that the first word is 'yes'. And you've indicated
21 to us that when you first came to the radio station you had
22 reviewed this response and draft and it seemed okay to you
23 based on what you knew at the time.

24 Well, now it's three and a half years later and
25 presumably there are things that you know now that you

1 didn't know in March of 2001, and so with that, all of that
2 background in mind, my first question is, is that 'yes'
3 response appropriate for what was in the station's Public
4 File on August 1, 1997?

5 A In all honesty, I would say that there were some
6 little tricks done by GGPR, that's my guess.

7 Q Okay. And what tricks do you think they pulled?

8 A There was open access to the Public File drawer.
9 Dave Evans was the Chief Engineer at the time, from what I
10 can gather, just from little notes that I've found in files,
11 where he would admonish an AO or praise them, he seemed a
12 little not schizophrenic, that's not the right word, but
13 passive aggressive.

14 Q Just enlighten me, what is an AO?

15 A Oh, announcer operator.

16 Q Okay.

17 A I'm sorry.

18 Q Okay.

19 A They're staff at the station.

20 Q Okay.

21 A And there was so much personalization of
22 everything. I mean people, it felt to me, in reviewing it,
23 in knowing some of the players on the periphery, because I'm
24 kind of a public radio industry person so I know all the
25 players in public radio, it seemed vicious, and that being

1 in a General Manager position at a couple of different
2 stations, I wouldn't be surprised if all kinds of things
3 were taken out of that Public File and used against the
4 station at all, it would not surprise me one iota.

5 So, I couldn't say for truth those things were
6 there or they weren't there because shenanigans were going
7 on with people that had complete access.

8 Q Now, recognizing that Mr. Evans is no longer with
9 us, and so there was no way for you to actually --

10 A Ever meet him.

11 Q -- confront him or question him about what he may
12 have done or not done relative to the Public File.
13 Apparently there are other individuals involved, or that had
14 been involved in this Golden Gate Public Radio petition, who
15 you could speak with, for example, Jason Lopez. And in that
16 regard did you ever happen to speak with Mr. Lopez about
17 access to the Public File and whether or not he may have
18 taken something from the Public File and not put it back?

19 A Quite frankly, I tried to have as little to do
20 with Mr. Lopez as possible. I didn't respect him. He had
21 come to -- the station had thrown a little party for me, I
22 think it was around mid April or something, just meet the
23 General Manager, and he appeared and he was very bold and
24 cavalier. And my heard was broken over a license challenge,
25 that's the worst thing you can levy against a station,

1 especially public radio. I'm very patriotic about it, I
2 believe in public radio as an American trust. And so I
3 couldn't be flippant, and he was very flippant with me at
4 this little party. And I just said, were you aware that
5 GGPR would never have gotten the station, it goes up to
6 auction, it's in the non-commercial bandwidth and it would
7 go for auction, it's not like it's handed to you, oh here,
8 now it's your pond. Oh, well, we were just, you know, he
9 gave me some blustery remark, I can't quite, I won't quote
10 him because I can't remember it, but I just backed off and
11 said, you know, it's cost the station a lot of money.

12 Q Did you have any subsequent contact with Mr. Lopez
13 about the substance of the petition or the substance of any
14 response that SFUSD made in response to the petition?

15 A I did not feel it was proper to commingle.

16 Q Do you know Deirdre Kennedy?

17 A I do.

18 Q Have you had any contact with her relative to the
19 substance of the Petition to Deny or SFUSD's response to the
20 petition?

21 A Zero.

22 Q Have you had any conversations with her at all?

23 A She came to the station once about six months
24 after I had been there, wanted to use the production room.
25 I said okay. Then about three months after that she sent me

1 an email wanting to have a program on the station. And I
2 said no, try the station you're working for, KQED. And
3 that's been my contact with Deirdre Kennedy.

4 Q Have you had any contact with a person named Mel
5 Baker?

6 A Once over the phone.

7 Q And what was that all about?

8 A Mr. Baker works for Metro Traffic and we use Metro
9 Traffic for our traffic reports. And I believe the station
10 in the past has been sensitive enough not to ask for Mel to
11 be on our station and give the traffic report, we have
12 another guy we use. And I think at one time Mel was filling
13 in for somebody on a traffic report, it must have been about
14 a year ago, and he gave a terrible traffic report, and I was
15 really angry, like he had missed his cue and then when they
16 tried to bring him up again it was just really sloppy radio.
17 So, I called Metro and I'm like, hey, what are you doing,
18 this should be clockwork for you guys, you're butchering our
19 breaks, what's going on. Oh, Nicole, this is Mel Baker.
20 Oh, then I connected the dots, oh, I think I've seen that
21 name. You know, you're really doing great thing at the
22 station, I'm really sorry, GGPR -- and I said, you know,
23 really, Mel, I don't want to talk about it, please, if you
24 ever fill in again hit the spots. Click.

25 Q That was that?

1 A That was that.

2 Q And no subsequent contact?

3 A No.

4 Q All right, focusing on -- well -- focusing on the
5 response that SFUSD gives, the information that has come out
6 during the course of the depositions and other discovery
7 that we have done, is to the effect that Ownership Reports
8 that concern 1993 and 1995, what we have right now is dated
9 in December of 1997. In other words, it's dated four months
10 after the actual license renewal is filed.

11 A The license renewal was filed in July of 1997.

12 Q It was certified on July 31, it was filed on
13 August 1.

14 A Okay.

15 Q So, if the Ownership Reports for 1993 and 1995
16 weren't prepared for the first time until December of 1997,
17 the certification wouldn't have been correct, you would
18 agree with that?

19 A It sounds logical.

20 Q Now, has anything come to your attention that
21 would indicate that Ownership Reports for 1993 and 1995 had
22 in fact been prepared in 1993 and 1995, and not December of
23 1997?

24 A Only in this current process, I believe that that
25 did come up, that these were backdated, is that the correct

1 term.

2 Q I think I understand what you're saying. I'm not
3 really sure if that's correct, but I'm not going to worry
4 about that. I guess where I'm going with this is, did any
5 information come to you that said, for example, well, the
6 1993 report, which the only copy of which we now have bears
7 a date of December 1997, there was in fact a report prepared
8 in January of February of 1993 and that that report was
9 placed in the Public File at that time. Has any information
10 like that come to your attention?

11 A Not really.

12 Q With respect to the 1995 report, which is also
13 dated in December of 1997?

14 A Right.

15 Q The only copy we've got right now.

16 A Right.

17 Q Has any information come to your attention that a
18 1995 Ownership Report was in fact prepared and placed in the
19 station's Public File in January of February of 1995?

20 A Only as I've read through and noted the dates that
21 the then Superintendent Rojas signed it, that's what I meant
22 by going through this now and looking at those dates, on
23 what was in the Public Information File for the Ownership
24 Reports.

25 Q I'm showing you what we understand to be the 1995

1 report which came as Attachment 4 to some admissions
2 responses. When you get to page two of that form, you will
3 note that it appears to have been signed in December of
4 1997. And that there's a signature that appears to be
5 Baldomar Rojas. And then there are, it looks like, some
6 initials that follow. Do you have any knowledge as to who
7 that person may be, whose initials appear there?

8 A I have no knowledge at the station. In fact,
9 quite frankly nobody at the station has those initials. I
10 don't know. Maybe the secretary.

11 Q We're all hoping that at some point somebody will
12 jump and say it's me, but thus far we haven't had that.

13 A LD, is that the good kind of cholesterol?

14 Q I think it's HDL is the good one. Likewise, for
15 the one that has been presented to us as the 1993 Ownership
16 Report, which came as Attachment 2 to the admissions
17 responses, you'll see that this is for January 31, 1993.
18 And then when you go to the second page you will see that it
19 too appears to have been signed 10 December 1997. And again
20 we have Baldomar Rojas and the mysterious LD.

21 A Did this change, yes, it must have from --

22 Q Yes, we have different information in 1993 than we
23 do in 1995. There were changes. Has the preparation of the
24 1995 report been the topic of discussion in the office, that
25 you're aware of, do you have any idea how it is the report

1 came to be prepared?

2 A Not since I've been there.

3 Q Moving on to response No. 2, Directive No. 2, you
4 can see here on August 1, 1997, did KALW Public File contain
5 all of the Issues Programs Lists required by then Section
6 73.3527? And in response to that the letter provides a
7 'yes' and then it goes on from there. Knowing what you know
8 now, on August 1, 1997 did the station's Public File contain
9 all the lists that were required by the rules?

10 A I don't know anything more than anybody else. I
11 would hope so.

12 Q Okay. I mean I can tell you it's fair to state
13 that if you don't know, you can just say I don't know.

14 A I don't know, I really don't know.

15 Q And has anyone at the station ever told you that
16 on August 1, 1997 all of those reports weren't there, all of
17 those lists weren't there?

18 A Nobody ever said that.

19 Q Nobody ever said that?

20 A No.

21 Q On the other hand, has anybody said to you, on
22 August 1, 1997, by God, those lists were there?

23 A I surmised it from reading the draft.

24 Q Okay. But, has anybody at the station told you, I
25 mean like I'm talking to you now --

1 A It's more like the Issues Programs Lists were
2 fine.

3 Q And who would have told you that?

4 A Probably in conversation with Bill.

5 Q Bill Helgeson?

6 A Yes.

7 Q Okay.

8 A We don't have a very big staff.

9 Q All right. I'm on a first name basis with a few
10 people.

11 A Well, I mean there's not many people to talk to,
12 there's about three or four of us.

13 Q Now, reading the first paragraph where it talks
14 about SFUSD and the present management believe that its
15 Public Information Files as of August 1, 1997 contained all
16 required Issues Programs List, materials, etcetera. Are you
17 part of the present management that had that belief, or were
18 you not involved in what is covered here by the term
19 'present management'?

20 A I was not asked did I believe that the Public File
21 had all that, I was not asked that directly. I would
22 surmise that I was included, however, I would surmise that
23 it's management.

24 Q But, to be fair to you, there is no declaration
25 from you to that effect in this letter so --

1 A Right.

2 Q -- that's why I'm trying to hone in on whether or
3 not the present management, as referenced in this letter,
4 really is meant to include you or not, since --

5 A I don't know.

6 Q -- you didn't get to sign anything?

7 A (No audible response.)

8 Q Let the record reflect relief. Now, focusing in
9 particular on the last sentence of that paragraph where it
10 reads, 'Furthermore, according to information in the files
11 of KALW's counsel, KALW station management again reviewed
12 the Public Information Files in January 1998". Well, of
13 course that couldn't have been you because you weren't
14 there?

15 A Right.

16 Q All right, so that ends that. Now, moving onto
17 the next paragraph, the first sentence reads, 'However, when
18 KALW's present management reviewed the Issues Programs List
19 file for the period in question', and that would have been
20 the period covered by the August 1, 1997 renewal
21 application, 'in connection with', there should be a word
22 there, 'in making its response to the bureau's inquiry
23 letter, they did not find, for each and every quarter during
24 that period, specifically prepared lists with respect to all
25 locally produced programs, but only the nationally produced

1 NPR Issues Programs Lists.'

2 Did you have any role whatsoever in the factual
3 assertions that appear in this sentence?

4 A No, that might have been going on when I first
5 came in. I know that Bill was reviewing the Public File,
6 the Issues Programs List specifically.

7 Q Now, moving on to the next paragraph, the first
8 full paragraph that appears on page six, it reads, 'SFUSD
9 and KALW's present management are unable to explain what may
10 have happened to this', referring to other issues or lists
11 that were referenced above, 'or any other missing lists with
12 respect to its locally produced programs.' Again, where it
13 refers to KALW's present management, in the context of this
14 sentence, is that supposed to reference Mr. Helgeson?

15 A That's, I would assume.

16 Q And you would have no reason to assume otherwise?

17 A No.

18 Q I mean there wouldn't be anybody besides yourself
19 and him?

20 A Exactly, that's pretty much it.

21 Q As you say, a small staff. All right, moving on
22 to the second inquiry, which is basically a subpart of the
23 Directive No. 2, I guess it was broken out into two parts
24 and we couldn't be bothered to go 2(a) or 2(b), we just
25 lumped them together as 2. The second part of it reads,

1 'Did any lists that were in the file contain the information
2 required by Section 73.3527.' And the response to that was,
3 'SFUSD and the present management at KALW FM believe that
4 its Issues Programs List file contained all information
5 required by then Section 73.3527 but as stated above cannot
6 presently account for a limited number of lists of
7 significant issues that were treated in locally produced
8 programs.' Again, the present management would be
9 Mr. Helgeson?

10 A I assume.

11 Q Moving on to page seven, again there's a reference
12 to present management of KALW, your assumption would be that
13 that is referring to Mr. Helgeson?

14 A Yes.

15 Q In the context of this letter?

16 A In the context of that letter, yes.

17 Q Now, looking at the first full paragraph of page
18 seven, if you could please just read that to yourself?
19 Having read that first full paragraph that appears on page
20 seven of the April 5, 2001 letter, is there any information
21 in that paragraph that you know now to be inaccurate?

22 A I don't think so.

23 Q Now, looking at the sentence in the middle of the
24 paragraph, 'SFUSD believes and avers', and we had our little
25 conversation as to what 'avers' means, 'that these materials

1 were present in the file on August 1, 1997.' Do you have
2 any knowledge as to whether that in fact was so, that all
3 the Issues Programs Lists that were required by the rule
4 were in fact in the file on August 1, 1997?

5 A I have no idea.

6 Q Now, moving on to Directive Question No. 4, the
7 response refers to the present General Manager and
8 Operations Manager. I take it we're talking about two
9 separate people and the General Manager there referred to is
10 you?

11 A Yes.

12 Q And it states that, 'Those two persons have
13 completely reviewed the Public Information File and made
14 sure that it contains all required documents, reports and
15 information through to the present.' Would that be
16 accurate?

17 A That would be accurate. It was from 1992 on, I
18 believe.

19 Q In any event, you personally satisfied yourself
20 that the information that was supposed to be there, dating
21 back to the period that the Commission was concerned about,
22 was in fact in the file?

23 A Towards the end of March, yes.

24 Q Yes. Okay. And so when we get to Directive
25 Inquiry No. 5, as of the date of this letter is the file now

ATTACHMENT 6

1 A I don't know.

2 Q Directive No. 4, were you asked to respond by
3 anyone to Directive No. 4?

4 A No.

5 Q Do you know whether anyone at the radio station
6 was asked to respond to Directive No. 4?

7 A I don't know.

8 Q Directive No. 5, were you asked to respond by
9 anyone to Directive No. 5?

10 A No.

11 Q Including part A, or subpart (a), whatever you
12 want to call that?

13 A No, not at the time of my arrival I was not.

14 Q And do you know whether anyone at the radio
15 station was asked to respond to Directive No. 5, including
16 subpart (a)?

17 A I don't know.

18 Q Now, in front of you there happens to be a copy of
19 a letter dated April 5 and it was filed at the Federal
20 Communications Commission on April 6, 2001. And prior to
21 the time this letter was filed with the FCC, did you see
22 this letter?

23 A I saw it in draft form.

24 Q You saw it in draft form. Were you asked to
25 provide any information or comments relative to the letter?

1 A I really can't remember other than that I had put
2 a few things in motion. I had asked that the Public File be
3 moved into my office, into a locked cabinet. I did, the
4 quarter was just ending actually towards the end of March,
5 so I wanted to make sure that all the public affairs
6 programs, things were correct as far as what was going to
7 put in there from here on out.

8 Q At least for that quarter you would have some
9 control over how that --

10 A Right, even though I came at the end of the
11 quarter, I wanted to see what was the process, walk me
12 through the process, what was your routine.

13 Q And what was their routine?

14 A The routine was to pull from, at that point the
15 NPR website, the Issues Programs List from NPR, and to
16 collect from the producers basically a who, what, how, when,
17 where, why sheet for the public affairs programs, not all of
18 them but those that really tackled substantive issues in the
19 community.

20 Q And as a consequence of that, a document or a
21 series of documents was generated?

22 A Yes.

23 Q And who physically actually caused the documents
24 to be generated?

25 A I would say to Bill, Operations Manager, because

1 MR. SHOOK: Okay. I'll tell you what, let's see
2 if we can do this so that both of us can look at it.

3 BY MR. SHOOK:

4 Q Moving to page three of the April 5 letter that
5 went to the Commission, there is the -- basically it's
6 supposed to replicate the directive that came from the
7 Commission, let's just see whether or not that was the case
8 here. So, also side by side I'm showing you the February
9 2001 letter that the Commission sent to SFUSD by way of Mr.
10 Sanchez. And do the -- it appears that the Directives
11 match?

12 A Absolutely, yes.

13 Q Now, in terms of the response, did you have any
14 role, whatsoever, in providing substantive information that
15 appears in the response, and please feel free to review the
16 entire response if you need to before answering that?

17 A When I found out about the license challenge, I
18 wanted to talk to the station's lawyer and find out what was
19 going on.

20 MS. REPP: Excuse me, Nicole, if I could just
21 interject that when you discuss your conversations with
22 Ernie Sanchez, that you not get into the substance of the
23 conversation, you can mention that you have had a
24 conversation, because of the attorney/client privilege you
25 don't have to go into substance.